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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 30, 2000

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE000662

Ex Parte: In the matter of
Adopting Rules Governing
the manner of installing
underground utility lines

ORDER PRESCRIBING NOTICE AND INVITING COMMENTS

The 1999 Virginia General Assembly passed Senate Joint Resolution No. 480 in response to its concerns relative to the proper separation of underground utility lines. This Resolution requested the State Corporation Commission ("Commission") to determine if regulations should be developed relative to separation distances for underground electric and gas facilities.

The Commission submitted a Report on Underground Utility Line Separation (Senate Document No. 24, 2000) to the Governor and the General Assembly of Virginia. This Report concluded that minimum separation distances should be established, not only for electric and gas utilities, but for all underground utility lines. The Commission recommended that regulations be developed for the proper separation of all underground utilities, including gas and electric, in both public and

private rights-of-way. It noted that the General Assembly could enact legislation delineating separation distances or could authorize the Commission to develop separation standards for all underground utility lines.

Earlier this year, § 56-257 of the Code of Virginia was amended, effective July 1, 2001, to provide that operators, as defined in § 56-265.15, having the right to install underground utility lines, as defined in § 56-265.15, "except interstate gas pipelines subject to regulation by the U.S. Department of Transportation, shall install such underground utility lines in accordance with accepted industry standards". See 2000 Va. Acts ch. 779. Section 56-257 defined "accepted industry standards" to include, as applicable, standards established by the National Electric Safety Code, the Commission's pipeline safety regulations, the Department of Health's waterworks regulations (12 VAC 5-590-10 et seq.), and standards established by the Utility Industry Coalition of Virginia. The amended statute directs the Commission to promulgate¹ any rules or regulations necessary to enforce the provisions of the statute as to those operators that do not comply with accepted industry standards. Section 56-257 of the Code of Virginia, as amended, expressly prohibits the Commission from ordering action by or imposing

¹ Section 56-257 directs that the Commission publish for comment the first set of regulations required by § 56-257, on or before January 1, 2001.

penalties on any county, city or town. Instead, it directs the Commission to inform counties, cities and towns of alleged violations by the locality of accepted industry standards or regulations adopted under the statute, and provides that at the request of the locality, the Commission may suggest corrective action.

On September 20, 2000, the Staff of the State Corporation Commission held a meeting and invited those who would be affected by regulations promulgated pursuant to § 56-257, as amended. Staff and the stakeholders discussed various issues relative to proposed rules for enforcing § 56-257. Based upon that meeting, the Staff has proposed the attached rules for the enforcement of § 56-257, as amended.

NOW UPON consideration of the proposed rules and the directives of § 56-257, the Commission is of the opinion and finds that public notice should be given of the attached rules; that interested persons should be afforded an opportunity to file written comments or request a hearing on the proposed rules appended hereto as Attachment 1; that the notice of the proposed rulemaking should be published in newspapers of general circulation throughout the Commonwealth; and that this Order and the proposed rules should be forwarded to the Registrar of

Regulations for publication in the Virginia Register of Regulations.²

Accordingly, IT IS ORDERED THAT:

(1) This matter shall be docketed and assigned Case No. PUE000662.

(2) A copy of this Order and the proposed rules shall be made available for public review in the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, during its regular hours of operation from 8:15 a.m. through 5:00 p.m., Monday through Friday.

(3) Interested persons may obtain a copy of this Order and the proposed rules upon which comment is sought (Attachment 1 hereto), by directing a request in writing for the same on or before January 12, 2001, to Massoud Tahamtani, Assistant Director, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218. Such requests shall refer to Case No. PUE000662.

(4) On or before January 22, 2001, any interested person desiring to comment upon the proposed "Rules for Enforcement of § 56-257 of the Code of Virginia" set out in Attachment 1 shall file an original and fifteen (15) copies of such comments in

² An unofficial version of the text of this Order is also available on the Commission's website at <http://www.state.va.us/scc/orders.htm>.

writing with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. PUE000662. The comments should set forth the person's interest in the proceeding, his comments on the rules, and proposed alternative language for any rule to which the commentator objects.

(5) Any interested person desiring a hearing on this matter shall file an original and fifteen (15) copies of a written request for hearing on or before January 22, 2001, with the Clerk of the Commission and shall state in detail why a hearing is necessary. Such a request shall identify the factual issues likely to be in dispute upon which the interested person seeks a hearing, together with the evidence expected to be introduced at any hearing convened by the Commission. Requests for hearing shall refer to Case No. PUE000662, and shall be directed to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. If no sufficient request for a hearing is received the Commission may enter an order promulgating rules based upon the written pleadings and comments filed herein.

(6) On or before December 22, 2000, the Commission's Division of Information Resources shall cause the following notice to be published as classified advertising on two

occasions in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF PROPOSED RULES THAT
THE STATE CORPORATION COMMISSION IS
CONSIDERING FOR THE ENFORCEMENT OF § 56-257 OF
THE CODE OF VIRGINIA GOVERNING THE MANNER IN
WHICH UNDERGROUND UTILITY LINES ARE INSTALLED
CASE NO. PUE000662

Section 56-257 of Title 56 of the Code of Virginia has been revised effective July 1, 2001, by the General Assembly. As revised, § 56-257 charges the State Corporation Commission ("the Commission") with the enforcement of its provisions. Amended § 56-257 requires operators having the right to install underground utility lines, with the exception of interstate gas pipelines subject to regulation by the U.S. Department of Transportation, to install such lines in accordance with accepted industry standards. Under the statute, as amended, "operator" is defined to include any person who owns, furnishes or transports materials or services by means of a utility line. Accepted industry standards for purposes of § 56-257, must include, as applicable, standards established by the National Electric Safety Code, the Commission's pipeline safety regulations, the Department of Health's waterworks regulations (12 VAC 5-590-10 et seq.) and standards established by the Utility Industry Coalition of Virginia.

The Staff of the State Corporation Commission has proposed rules for the enforcement of § 56-257 of the Code of Virginia, as amended. These regulations will impact public utilities, cities, counties, and towns operating utility lines, as well as the public generally. Therefore, the Commission is inviting comments and requests for hearing on the rules proposed by the Commission Staff.

A copy of the Order Prescribing Notice and Inviting Comments, together with the proposed rules upon which comment is sought, may be reviewed from 8:15 a.m. to 5:00 p.m., Monday through Friday, in the State Corporation Commission's Document Control Center, located at 1300 East Main Street, Tyler Building, First Floor, Richmond, Virginia 23219. Interested persons may obtain a copy of the Commission's Order and the proposed rules under consideration by directing a written request for the same on or before January 12, 2001, to Massoud Tahamtani, Assistant Director, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218, and referring to Case No. PUE000662. Interested persons may also obtain a copy of the Order and Attachment 1 from the Commission's website, <http://www.state.va.us/scc/orders.htm>.

Any interested person who wishes to comment upon the proposed rules (Attachment 1 to the Commission's Order Prescribing Notice and Inviting Comments) shall file on or before January 22, 2001, an original and fifteen (15) copies of his comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall refer to Case No. PUE000662. The comments should set forth the person's interest in this proceeding, his comments on the rules, and if the comments object to certain provisions in the proposed rules, proposed alternative language for the rule provision to which objection has been made should be included in the comments.

Any interested person desiring to request a hearing in this matter shall file an original and fifteen (15) copies of a written request for hearing with the Clerk of the Commission at the address set forth above on or before January 22, 2001, and

shall state in detail why a hearing is necessary. Such a request should identify the factual issues upon which the interested person seeks hearing, together with the evidence expected to be introduced if a hearing is convened. If no sufficient request for hearing is received, the Commission may enter an order promulgating rules based upon the comments and the written pleadings filed in this proceeding.

All communications to the Commission regarding this proceeding should be directed to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and should refer to Case No. PUE000662.

THE DIVISION OF ENERGY REGULATION OF
THE STATE CORPORATION COMMISSION

(7) The Commission's Division of Information Resources shall forthwith cause this Order, together with the proposed Rules for Enforcement of § 56-257 of the Code of Virginia, to be forwarded for publication in the Virginia Register of Regulations.

(8) The Commission's Division of Information Resources shall promptly file with the Clerk of the Commission the proof of the publication of the notice required herein.

Chapter 325.

**RULES FOR ENFORCEMENT OF
§ 56-257 OF THE CODE OF VIRGINIA.**

Part I.

General Provisions.

20 VAC 5-325-10. Scope.

This chapter is hereby adopted, effective July 1, 2001, by the State Corporation Commission ("Commission") to enforce the provisions of § 56-257 of Title 56 of the Code of Virginia relative to the manner of installing underground utility lines as defined by § 56-265.15 of the Code of Virginia.

20 VAC 5-325-20. Definitions.

The following words and terms when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Division" means the State Corporation Commission's Division of Energy Regulation.

"Installation records" means maps, drawings, diagrams, sketches, or any other depictions or descriptions of an underground utility line that may be used to demonstrate compliance with the applicable standards as set out in 20 VAC 5-325-30 and 20 VAC 5-325-40.

Part II.

Standards.

20 VAC 5-325-30. Standards incorporated by reference.

The following standards are incorporated by reference within these rules and shall be considered part of the requirements of these rules:

1. The National Electric Safety Code;
2. 49 C.F.R., Parts 192 and 195;
3. The Virginia Department of Health's Waterworks Regulations (12 VAC 5-590-10 et seq.); and
4. Utility separation standards established by the Utility Industry Coalition of Virginia.

20 VAC 5-325-40. Installation of utility lines.

All operators, as defined in § 56-265.15 of the Code of Virginia, having the right to install underground utility lines, as defined in § 56-265.15 of the Code of Virginia, except interstate gas pipelines subject to regulation by the United States Department of Transportation, shall install such underground utility lines in accordance with the applicable standards in effect at the time of installation of such underground utility lines. These standards include, as applicable, the standards incorporated by reference in 20 VAC 5-325-30. If there is a conflict among any of the standards incorporated by reference in 20 VAC 5-325-30, the most stringent standard shall be applied.

20 VAC 5-325-50. Operator's responsibilities to maintain accurate records.

In order to demonstrate compliance with § 56-257 of the Code of Virginia, the operator shall prepare and maintain reasonably accurate installation records of each underground utility line installed after July 1, 2001.

20 VAC 5-325-60. Emergency installations.

Temporary repairs of underground utility lines performed to mitigate an emergency as defined in § 56-265.15 of the Code of Virginia are not required to comply with the provisions of these rules. Permanent repairs made after the emergency, as defined in § 56-265.15 of the Code of Virginia, ceases to exist must comply with this chapter.

Part III.

Enforcement.

20 VAC 5-325-70. Report of probable violations.

Any person, as defined in § 56-265.15 of the Code of Virginia, may report probable violations of § 56-257 of the Code of Virginia to the Division. Reports of probable violations may be submitted to the Division in writing, by telephone, fax, e-mail, or in person.

20 VAC 5-325-80. Division investigation of probable violations.

Upon receipt of a report of a probable violation, the Division shall conduct an investigation to examine all the relevant facts regarding the reported probable violation. The investigation may include, among other things, records verification, informal meetings, teleconferences, and photo-documentation. Upon completion of the investigation and finding

evidence of a probable violation of § 56-257 of the Code of Virginia and these rules, the

Division shall take one or more of the following actions:

1. Issue a warning letter to the person alleged to have committed the violation ("respondent");
2. Issue an Information Letter to a county, city, or town alleged to have committed the violation, advising of the discovery of an alleged violation;
3. Enter settlement negotiations with the respondent. Upon reaching agreement on settlement terms, the Division shall present the proposed settlement to the Commission for final acceptance or rejection; or
4. Request the issuance of a "Rule to Show Cause" order pursuant to the Commission's Rules of Practice and Procedure (5 VAC 5-10-10, et seq.).

20 VAC 5-325-90. Commission action.

A. The Commission may accept or reject a proposed settlement to resolve probable violations. If the Commission rejects a proposed settlement but finds a probable violation may have occurred, a public hearing will be scheduled to receive evidence and take appropriate enforcement action as provided by the Commission's Rules of Practice and Procedure (5 VAC 5-10-10, et seq.).

B. If the Commission finds, after a hearing, that a violation has occurred or is continuing, it may issue a remedial order or injunction. The remedial order or injunction may direct the party or parties, other than cities, counties, or towns, to take any action, including the payment of a

civil penalty as provided by § 12.1-13 of the Code of Virginia. A remedial order issued by the Commission under this section shall be effective upon issuance, in accordance with its terms, unless stayed, suspended, modified or rescinded.

C. If, upon investigation, the Commission finds reasonable grounds to conclude that a violation has occurred or is continuing, and presents an immediate potential danger to life, health, property or essential public service, the Commission may issue a temporary injunction and schedule a hearing and require the probable violator, other than cities, counties, or towns, to show cause why it should not be permanently enjoined on account of the alleged violation or violations.

20 VAC 5-325-100. Civil penalties.

A. The amount of the civil penalty for a violation of these rules shall be determined in accordance with § 12.1-13 of the Code of Virginia.

B. In determining the amount of any civil penalty included in a settlement, the nature, circumstances, and gravity of the violation, the degree of the probable violator's culpability, the probable violator's history of prior offenses, and such other factors as may be appropriate shall be considered.

C. The probable violator shall pay a civil penalty that has been imposed by the Commission as a result of a rule to show cause or pursuant to an order of settlement by submitting to the Division a certified check made payable to the Treasurer of Virginia in the correct amount of the civil penalty determined by the Commission.

D. If the probable violator or named defendant in an Order issued pursuant to these rules promulgated hereunder fails to comply with such Order, then the amount of the civil penalty for failure to comply with the Commission's Order shall be determined in accordance with § 12.1-33 of the Code of Virginia.

20 VAC 5-325-110. Petition for reconsideration.

Any person subject to an order from the Virginia State Corporation Commission may petition the Commission for reconsideration of its order under the Commission's Rules of Practice and Procedure (5 VAC 5-10-10, et seq.).

20 VAC 5-325-120. Appeals generally.

Any final finding, decision setting the substantive law, order or judgment of the Commission may be appealed only to the Supreme Court of Virginia, subject to § 12.1-39 et seq. of the Code of Virginia, the Commission's Rules of Practice and Procedure (5 VAC 5-10-10, et seq.), and Rule 5:21 of the Supreme Court.